

## **Appendix C** NEPA/404 Concurrence Letters

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1. Purpose and need, criteria for selection of alternatives, range of alternatives
2. Least Environmentally Damaging Practicable Alternative (LEDPA)
3. Conceptual Habitat Mitigation and Monitoring Proposal (HMMP)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

October 8, 1999

Chris Collison, Chief  
Office of Biological Services  
ATTN: Monica Finn, Biologist  
Caltrans District 3  
PO Box 911  
Marysville, California 95901

Dear Mr. Collison:

The U.S. Environmental Protection Agency has reviewed the materials submitted by Caltrans to us on September 1, 1999 via electronic mail regarding the State Route 149/99/70 Project between Oroville and Chico in Butte County, California. In addition to materials prepared by Caltrans, Monica Finn of your office provided EPA with a copy of letters submitted by the U.S. Fish and Wildlife Service (FWS) and the Army Corps of Engineers (Corps) dated September 3, 1999 and September 9, 1999, respectively. Caltrans requests EPA's written concurrence on the following aspects of the project's environmental documentation under the NEPA-404 Memorandum of Understanding: project purpose and need; criteria for selection of alternatives; and range of alternatives to be included in the State Route 149 Widening Project environmental document. The materials indicate that, as of this date, Caltrans and the Federal Highway Administration (FHWA) intend to prepare an Environmental Assessment, which would be used to determine if a Finding of No Significant Impact (FONSI) is appropriate or whether an Environmental Impact Statement is warranted.

Based upon the documentation provided to EPA, we agree to concur with the project purpose and need, criteria for selection of alternatives, and range of alternatives to be presented in the environmental document. We are, however, supportive of the positions expressed by the FWS and the Army Corps in their September 1999 letters to Caltrans regarding an expansion of the range of alternatives to be examined in the environmental document. We acknowledge the statement of Monica Finn (October 8, 1999 phone conversation with EPA) that any reference to "interchanges" in the action alternatives presented in Caltrans' September 1, 1999 documentation should be deleted, as interchanges are no longer part of the proposed project. Finally, we urge Caltrans and FHWA to work closely with the Corps, the FWS, EPA, the California Department of Fish and Game and other agencies to secure the best possible information about whether a Federal EIS may be an appropriate vehicle, should unavoidable impacts to vernal pools, wetlands and other aquatic resources protected under Section 404 of the Federal Clean Water Act prove to be a major source of concern.

October 8, 1999

We appreciate the opportunity to comment on the project pursuant to the NEPA-404 Memorandum of Understanding between our agencies. We look forward to working with Caltrans and FHWA as the environmental document is prepared and submitted for public review, and as Caltrans proceeds to the next stage in the NEPA-404 process. If you have any questions, please call me at 415-744-1575.

Sincerely,

A handwritten signature in black ink, reading "David Tomsovic". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

David Tomsovic  
Federal Activities Office  
Cross-Media Division

cc: John Hoole, FHWA, Sacramento  
Mark Littlefield, FWS, Sacramento  
Michael Finan, Corps, Sacramento



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

September 9, 1999

Regulatory Branch (199700165)

Jean L. Baker  
Chief, Office of Environmental Technical Studies  
CALTRANS, District 3  
P.O. Box 911  
Marysville, California 95901

Dear Ms. Baker:

I am responding to your request, on behalf of Caltrans and the Federal Highway Administration, for Corps of Engineers' concurrence for the State Route (SR) 149/99/70 project. This highway improvement project is proposed to be constructed between existing freeways/expressways on SR 70 and SR 99 between Oroville and Chico, in Butte County, California. This response is pursuant to the 1994 Memorandum of Understanding on the Integration of the National Environmental Policy Act (NEPA) and Clean Water Act Section 404 procedures for Surface Transportation Projects.

We have reviewed the revised NEPA project purpose, need, criteria for the selection of project alternatives and range of alternatives to be included in the draft environmental assessment (EA) as stated in the September 1, 1999, transmittal from Monica Finn in your office. We concur with these, provided two additional Highway Gap Closure on Existing SR 149 alternatives are added; one which involves upgrading existing SR 149 to four-lane expressway or freeway, with freeway to freeway interchanges at SR 70 and SR 99 and closing existing driveways, with no frontage road construction, and an alternative which is the same as above, but with a local interchange at Shippee Road. Both of these should include the 3 variations, north only, south only and Butte County Meadowfoam avoidance, being studied along SR 149.

The Corps of Engineers jurisdiction within the study areas is under the authority of Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States. Waters of the United States include, but are not limited to, perennial, intermittent or ephemeral streams, lakes, ponds, and wetlands such as marshes, vernal pools, wet meadows, and seeps. Projects that involve discharges of fill material into waters of the United States require prior Department of the Army authorization.

If it is determined that an Environmental Impact Statement (EIS) is necessary for this project, we will serve as a cooperating agency in developing the EIS, as a federal agency with permitting authority over portions of the project. The range of alternatives considered in an EA or EIS should include alternatives to filling waters of the United States, including wetlands. Every effort should be made to avoid project features which require the discharge of dredged or fill material in waters of the United States. In the event it can be clearly demonstrated there are no practicable alternatives to filling waters of the United States, mitigation plans should be developed to compensate for the losses resulting from the project.

Thank you for your cooperation. Please provide us with notice of any scoping meetings, wetland delineation report(s) for the proposed alternatives and draft EA and/or EIS for the project, when they are available, for our review and comment. If you have any questions, please write to Michael Finan, Room 1444, or telephone (916) 557-5324. We appreciate the opportunity to be included in your review process.

Sincerely,



Larry Vinzant,  
Chief, Sacramento Valley Office

Copy Furnished:

John Hoole, U.S. Department of Transportation, Federal Highway Administration, 980 Ninth Street Suite 400, Sacramento, California 95814-2724

Elizabeth Goldmann, U.S. Environmental Protection Agency, Region IX, Wetlands Regulatory Office (WTR-8), Water Management Division, 75 Hawthorne Street, San Francisco, California 94105

Mark Littlefield, U.S. Fish and Wildlife Service, Wetlands Branch, 2800 Cottage Way, Room W-2605, Sacramento, California 95825



IN REPLY REFER TO:

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office

2800 Cottage Way, Room W-2605

Sacramento, California 95825

PPN 2331

September 3, 1999

Mr. Chris Collison  
California Department of Transportation  
ATTN: Office of Environmental Technical Studies (Monica Finn)  
P.O. Box 911  
Marysville, California 95901

Subject: NEPA/404 Integration Process Concurrence For Elements of the State Route  
149 Widening Project Environmental Assessment.

Dear Mr. Collison:

This letter is in response to a September 1, 1999, California Department of Transportation (Caltrans) request for the U.S. Fish and Wildlife Service's (Service) concurrence with the purpose, need, criteria for the selection of project alternatives, and the range of alternatives to be included in the State Route (SR) 149 Widening Project Environmental Assessment. Our response is made pursuant to the 1994 Memorandum of Understanding on Integration of the National Environmental Policy Act and Clean Water Act Section 404 Procedures for Surface Transportation Projects and is not intended to take the place of any formal comments that may be required under the Fish and Wildlife Coordination Act or the Endangered Species Act of 1973 as amended.

As a result of the August 18, and September 1, 1999, informal NEPA/404 integration dispute resolution meetings between the Service, Caltrans, and the Federal Highway Administration, and your August 25, 1999, NEPA/404 coordination letter, the Service concurs with the purpose, need, criteria for the selection of project alternatives to be included in the SR 149 Widening Project Environmental Assessment. In addition, concurrence on the range of alternatives is given pending the inclusion of a second non-highway alternative. As discussed at the September 1, 1999, meeting, the second non-highway alternative should involve new interchanges at the existing 70/149 and 99/149 junctions with SR 149 remaining a 2 lane facility. This alternative could also include minor widening to accommodate a median barrier.

If you have any questions concerning the Service's comments on this project, please contact Jerry Bielfeldt (Wetlands Branch) at (916) 414-6580.

Sincerely,



Dale A. Pierce  
Acting Field Supervisor

cc: PARD (ES)-Portland, OR  
FHWA, Sacramento, CA (Attn: John Hoole)  
Caltrans Hqts, Sacramento, CA  
EPA, San Francisco, CA (Attn: David Tomsovic)  
EPA, San Francisco, CA (Attn: Elizabeth Goldmann)  
NMFS, Santa Rosa, CA.  
ACOE, Sacramento, CA. (Attn: Michael Finan)  
CVRWQCB, Sacramento, CA (Attn: Doug Straw)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY .

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

August 30, 2002

Susan D. Bauer, Acting Chief  
Environmental Management M-2  
Caltrans District 3  
P.O. Box 911  
Marysville, CA 95901-0911

Dear Ms. Bauer:

This letter responds to your letter of August 21, 2002, in which you requested our concurrence, under the National Environmental Policy Act/Clean Water Act Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU), on the least environmentally damaging practicable alternative (LEDPA) for the **State Route (SR) 149 Highway Improvement Project in Butte County, California.**

In response to your request regarding the LEDPA, we have reviewed the Draft Alternatives Analysis and the Draft Environmental Impact Statement (DEIS). Based on our review of these documents and attendance at the August 29, 2002 meeting in Sacramento, we concur that Alternative 3 Avoid Butte Meadowfoam is the LEDPA. We believe Alternative 3 Avoid Butte Meadowfoam would enable the Federal Highway Administration (FHWA) and Caltrans to meet the project's overall purpose while minimizing adverse project impacts to aquatic resources.

The next step in the NEPA/404 MOU process is for FHWA to seek concurrence from EPA and the U.S. Army Corps of Engineers on the conceptual mitigation plan and implementation schedule for this project. EPA is committed to being an active partner in the NEPA/404 MOU process and is available to provide early input for this next step. We are also available to review draft work products or to meet with you to ensure that the final mitigation plan satisfies these commitments and addresses all pertinent issues.

If you have questions regarding these comments, please contact Kathleen Dadey of our Wetlands Regulatory Office at (415) 972-3474, or Nancy Levin of my staff at (415) 972-3848.

Sincerely,

A handwritten signature in black ink, reading "Lisa B. Hanf", is positioned above the typed name and title.

Lisa B. Hanf, Manager  
Federal Activities Office

cc: Congressman Wally Herger  
R.C. Slovensky, Federal Highway Administration  
Tom Cavanaugh, U.S. Army Corps of Engineers  
Jerry Bielfeldt, U.S. Fish and Wildlife Service  
Michael Aceituno, National Marine Fisheries Service





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

September 3, 2002

Regulatory Branch (199700165)

Susan Bauer  
Acting Chief, Environmental Management  
California Department of Transportation  
P.O. Box 911  
Marysville, California 95901

Dear Ms. Bauer:

I am writing in response to your request for concurrence on Alternative 3 (Avoid Butte County Meadowfoam) as the preferred alternative for the Route 149 Highway Improvement Project in Butte County.

Based on the information provided, it appears that Alternative 3 may be the least environmentally damaging practicable alternative. This tentative concurrence is in accordance with the "Memorandum of Understanding, National Environmental Policy Act and the Clean Water Act Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada". Once we receive a permit application, the final Biological Assessment, and a mitigation plan, we will begin processing a Department of the Army permit for this work.

Please refer to identification number 199700165 in any future correspondence concerning this project. If you have any questions, please write to Tom Cavanaugh at the letterhead address, or email Thomas.J.Cavanaugh@usace.army.mil, or telephone 916-557-5261.

Sincerely,

Tom Cavanaugh  
Chief, Sacramento Valley Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

January 28, 2003

Jean L. Baker, Chief  
Environmental Management M-2  
Caltrans District 3  
P.O. Box 911  
Marysville, CA 95901-0911

Dear Ms. Baker:

This letter responds to your letters of December 18, 2002 and January 13, 2003 in which you requested our concurrence, under the National Environmental Policy Act/Clean Water Act Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU), on the conceptual mitigation plan and implementation schedule for the **State Route (SR) 149 Highway Improvement Project in Butte County, California**.

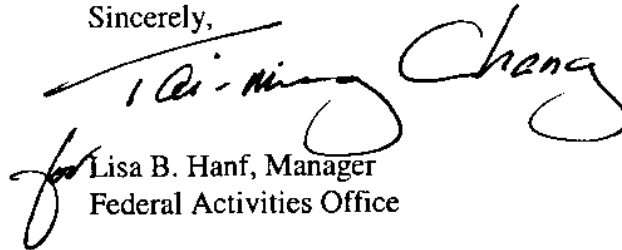
In response to your request, we have reviewed and provided input on several versions of the Conceptual Habitat Mitigation and Monitoring Proposal. The first version, submitted on December 18, 2002, was revised by Caltrans based on EPA feedback provided on December 19 and agreements made at a January 7, 2003 meeting with Caltrans, EPA, the U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service. The revised document was submitted to EPA on January 13, 2003. The January 13, 2003 document reflected some, but not all, of the agreements made at our January 7 meeting. EPA notified Caltrans of the outstanding items on January 16, 2003. Caltrans provided the remaining information in an email received by EPA on the afternoon of January 27, 2003.

Based on our review of the revised Conceptual Habitat Mitigation and Monitoring Proposal (file name: 01.24.03.but1349HMMP; modified 1/27/03 - 3:15 p.m.) and attachments (maps and tables) provided in the January 27, 2003 - 3:20 p.m. email from Caltrans, we concur on the conceptual mitigation plan and implementation schedule for this project. In order to complete our administrative record, please mail a hard copy of the attachments to my attention, at your earliest convenience.

Thank you for considering and incorporating our feedback while completing the conceptual mitigation plan and implementation schedule. The next step in the NEPA process is the preparation of the Final Environmental Impact Statement (EIS). In our comments on the Draft EIS (July 30, 2002 letter), we expressed our concern about the cumulative impacts analysis for this project, and provided specific recommendations for the Final EIS. Please let me know if we can be of assistance in addressing these and our other Draft EIS comments as you prepare the Final EIS.

If you have questions regarding this concurrence, please contact Kathleen Dadey of our Wetlands Regulatory Office at (415) 972-3474, or Nancy Levin of my staff at (415) 972-3848.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa B. Hanf", is written over a horizontal line. The signature is fluid and cursive.

Lisa B. Hanf, Manager  
Federal Activities Office

cc: Congressman Wally Herger  
R.C. Slovensky, Federal Highway Administration  
Kome Ajise, Caltrans  
Tom Cavanaugh, U.S. Army Corps of Engineers  
Jerry Bielfeldt, U.S. Fish and Wildlife Service  
Michael Aceituno, National Marine Fisheries Service  
John Clark, Butte County Association of Governments



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

January 31, 2003

Regulatory Branch (199700165)

Jean L Baker, Chief  
Environmental Management, M-2  
California Department of Transportation, District 3  
P.O. Box 911, Marysville CA 95901-0111

Dear Ms. Baker:

This concerns your January 15, 2003, request, on behalf of the Federal Highways Administration, pursuant to the 1994 NEPA/404 integration MOU for the State Route (SR) 149 Highway Improvement Project in Butte County, California

Based on the information available to us at this time, we concur on the conceptual mitigation plan for this project. For our review please provide the information requested by the Environmental Protection Agency, in their January 28, 2003, letter.

As previously discussed, the range of alternatives considered in an Environmental Impact Statement (EIS) should include alternatives to placing fill in wetlands or other waters of the United States within the study area. Every effort should be made to avoid project features which require the discharge of fill or excavation in waters of the United States, including wetlands. In the event it can be clearly demonstrated there are no practicable alternatives to filling waters of the United States, a final mitigation plan should be developed to compensate for the losses resulting from project implementation.

Please refer to identification number 199700165 in any future correspondence concerning this project. If you have any questions, please write to Tom Cavanaugh at the letterhead address, or email Thomas.J.Cavanaugh@usace.army.mil, or telephone 916-557-5261.

Sincerely,



Andrew J. Rosenau  
Chief, Regulatory Branch

Copies Furnished:

Susan Bauer, California Department of Transportation, Acting  
Chief, Environmental Management, P.O. Box 911, Marysville,  
California 95901



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

IN REPLY REFER TO  
PPN 2331

January 30, 2003

Ms. Jean L. Baker, Chief  
Environmental Management, M-2  
California Department of Transportation, District 3  
703 B Street  
Marysville, California 95901-0911

Dear Ms. Baker:

This letter is in response to a January 15, 2003, California Department of Transportation request for U.S. Fish and Wildlife Service (Service) concurrence with the conceptual mitigation plan for the Butte 70/149/99/191 Highway Improvement Project, Butte County, California.

The Service has reviewed the January 13, 2003, Habitat Mitigation and Monitoring Proposal, and the January 27, 2003, revised proposal (file name:01.24.03.but1349HMMP), and concurs with the determination the proposed plan would mitigate unavoidable habitat impacts as a result of implementing the proposed project.

Thank you for the opportunity to comment. If you have any questions, please contact Jerry Bielfeldt (Watershed Planning Branch) in the Sacramento Fish and Wildlife Office at (916) 414-6584.

Sincerely,

David L. Harlow  
Acting Field Supervisor

cc:

AES, Portland, OR  
FHWA, Sacramento, CA  
EPA, San Francisco, CA  
ACOE, Sacramento, CA  
CDFG, Region II, Rancho Cordova, CA  
BCAG, Chico, CA